

**DRART**  
**VIRGINIA BOARD OF HEALTH PROFESSIONS**  
**DEPARTMENT OF HEALTH PROFESSIONS**  
**FULL BOARD MEETING**  
**APRIL 20, 2007**

**TIME AND PLACE:** The meeting was called to order at 1:08 p.m. on Friday, April 20, 2007, at the Department of Health Professions, 6603 W. Broad St., 5<sup>th</sup> Floor, Room 2, Richmond, VA.

**PRESIDING OFFICER:** David R. Boehm, President

**MEMBERS PRESENT:** Susan G. Chadwick, Au.D.  
Lynn M. Cooper  
Meera A. Gokli, D.D.S.  
Mary Gregerson, Ph.D.  
David H. Hettler, O.D.  
Damien Howell, P.T.  
Juan M. Montero, II, M.D.  
Vilma Seymour, Citizen Member  
Mary M. Smith, N.H.A.  
Demis L. Stewart, Citizen Member  
Joanne Taylor, Citizen Member  
John P. Turner, L.P.C.  
John T. Wise, D.V.M.

**MEMBERS NOT PRESENT:** Jennifer H. Edwards, Pharmacy  
Billie W. Hughes, F.S.L.  
Lucia Anna Trigiani, Esq., Citizen Member

**STAFF PRESENT:** Emily Wingfield, Chief Deputy Director  
Amy Marschean, Senior Assistant Attorney General,  
Board Counsel  
Elizabeth A. Carter, Ph.D., Executive Director for the  
Board  
Elaine Yeatts, Senior Regulatory Analyst  
Susan Stanbach, Senior Management Analyst  
Faye Lemon, Director, Enforcement  
Carol Stamey, Administrative Assistant

**OTHERS PRESENT:** There were no others present.

**QUORUM:** With fourteen (14) members present, a quorum was established.

**AGENDA:** No changes or additions were made to the agenda.

**APPROVAL OF MINUTES:** On properly seconded motion by Mr. Howell, the Board voted unanimously to adopt the minutes of the January 18, 2007 meeting as amended.

**PUBLIC COMMENT:** No public comment was presented.

**DEPARTMENT DIRECTOR'S  
REPORT:**

Ms. Ryals reported that the Governor's initiative on Health Care Reform was moving forward. Ms. Ryals reported that a workforce group had been created to review the shortage of nurses, nursing support, physicians and long term care affecting access to care. She noted that updates to this initiative as well as other initiatives could be found on the Health and Human Resources website at [www.hhr.virginia.gov](http://www.hhr.virginia.gov). A final report from the workforce is due to the Governor in September.

Ms. Ryals presented a slide presentation on the Agency's Key Performance Measures and challenges to be faced to meet the new goals. She provided a detailed summary of the agency's statistical review noting the need for improvement in case resolution time. Additionally, to improve case processing and resolution, Ms. Wingfield was appointed to lead three action teams: Intake and Investigations, Probable Cause, and Old Cases.

The matter of informal and formal hearing requests for continuances were discussed as a common factor in the delay of case resolution at the board level.

On properly seconded motion by Dr. Turner, the Board voted unanimously that continuances not be included in the 250 day requirement for case closure.

Ms. Ryals reported that the agency's move date is slated for mid August 2007.

**UPDATE ON LEGISLATION AND  
REGULATIONS:**

Ms. Yeatts presented a summary of the Legislation implemented in 2007 specific to the Department of Health Professions. Additionally, the regulations requiring licensure of assisted living facilities and medication aides becomes effective July 1, 2007.

She reported that the deadline to submit legislation for the 2008 General Assembly has not yet been set but will be due before the Fall.

**EXECUTIVE DIRECTOR'S  
REPORT:**

**Workplan**

Dr. Carter presented an updated overview of the 2007 workplan of each of the individual Committee's. Specifically, she noted the issues of emerging professions and criminal background checks.

**Sanctions Reference Study**

Dr. Carter reported that the Board of Veterinary Medicine had finalized its study and was now using SRP to aid in case decisions. She stated that the Board of

Funeral Directors and Embalmers had adopted their system and should begin implementation in April. The Board of Pharmacy has requested an update. Additionally, she indicated that the Board of Optometry would be receiving a presentation of its initial analysis in May.

Dr. Carter reported that the application for the Council on State Government's 2007 Innovations Awards Program had been submitted on the Board's Sanctions Reference Study and is awaiting feedback. The study provides operational models of transparent, empirically derived decision-making tools that enable consistency and fairness in a heretofore subjective process.

Dr. Carter also reported that she will be making a presentation at the Association of Psychological Science's 19<sup>th</sup> annual meeting in May on the Sanctions Reference Study. The presentation will focus on the impetus behind the study, the qualitative as well as quantitative methodologies employed and examples of working systems.

#### **Budget**

Dr. Carter apprised the Board that 79% of its budget had been used; however, expenditures should remain within the budget through the end of the year.

#### **UPDATE ON EDUCATION:**

Ms. Jolly presented an overview of the Board's current communication plan developed at the Board's October 2006 retreat. Ms. Jolly noted that she will be attending a conference in Chicago on Government Communication. She will report back to the Board at the next meeting on how she intends to incorporate the new approaches highlighted at this conference.

#### **COMMITTEE REPORTS:**

##### **Education Committee**

Ms. Smith reported that the Committee had met to discuss the American Association of Retired Persons' (AARP's) request for input on their review of continued competency. The Committee noted that additional research on barriers to continued competency was needed. Further, that information should be collected from professional and regulatory organizations relating to continued competency.

Ms. Smith reported that the Committee recommended that member boards be requested to report to BHP on the issues studied and approaches being considered by the boards relating to problems with continued competency. In addition, information about any efforts being

undertaken by national professional organizations and associations of state regulatory boards relating to continued competency are also sought. On properly seconded motion by Ms. Smith, the motion carried unanimously.

### **Regulatory Research Committee**

Dr. Hettler reported that the Committee had met to discuss proposed fast-track changes to the Practitioner Self-Referral and Public Participation Guidelines Regulations. Additionally, the Committee discussed emerging professions and the request from the Director for the Board to conduct an updated study on the need for criminal background checks of applicants and licensees. Each issue was discussed in turn:

Practitioner Self-Referral - Ms. Yeatts provided a brief overview of the need for amendment to the Practitioner Self-Referral Regulations. The proposed language is incorporated into the minutes as Attachment 1. Dr. Hettler moved that the proposed amendments to the Practitioner Self-Referral Regulations move forward through the fast-track approach. The motion was properly seconded and carried unanimously.

Public Participation Guidelines Regulations – Ms. Yeatts provided a brief explanation of the proposed amendments to the Public Participation Guidelines. The proposed language is incorporated into the minutes as Attachment 2. Dr. Hettler moved that the proposed amendments to the Public Participation Guidelines Regulations move forward through the fast-track approach. The motion was properly seconded and carried unanimously.

Criminal Background Checks - Dr. Hettler reported that the Committee had discussed the draft workplan to conduct criminal background checks. Discussion items included the reinstitution of the felony question on the licensure renewal form, cost benefit, criminal random background audit sampling and harm to the elderly. The draft workplan is incorporated into the minutes as Attachment 3. Dr. Hettler moved to accept the draft workplan to conduct criminal background checks. The motion was properly seconded and carried unanimously.

Emerging Health Professions – Dr. Hettler reported that the Committee had received a request to consider certification of medical aestheticians. Staff was directed to inform the requestor that estheticians are to be regulated through the Board of Barbers and Cosmetology effective July 1, 2007 and that the matter should first be

placed before them. Additionally, the Committee recommended that staff monitor new evolving professions as well as continue the monitoring the regulation of estheticians through the Board of Barbers and Cosmetology. Dr. Hettler moved adoption of the workplan (see Attachment 4) and the committee's additional recommendations. The motion was properly seconded as was a friendly amendment by Mr. Howell to include surgical assistants, dialysis patient care technicians and to survey member boards to ascertain future professions for review. The motion passed unanimously.

#### **Practitioner Self-Referral Committee**

The request for a new advisory opinion was withdrawn, so the Committee meeting originally scheduled for today was canceled.

#### **NEW BUSINESS:**

Dr. Gokli requested information on the feasibility of charging a fee for case review at the formal level. Ms. Wingfield addressed the question noting that a fee could be charged through a Consent Order; however, the monies were payable to the Literary Fund and may require statutory changes across all boards. Additionally, she noted that the boards' current regulations allow heavier reinstatement fees for reinstatement subsequent to discipline.

Dr. Gokli also requested that the Finance Department work up a presentation of the agency's proposed budgets once all data has been received. Dr. Carter indicated that this is done annually and is expected to be presented to the Board for comment at its October meeting.

#### **ADJOURNMENT:**

The meeting adjourned at 3:25 p.m.

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David R. Boehm, L.C.S.W.  
Board President

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Elizabeth A. Carter, Ph.D.  
Executive Director for the Board

*Commonwealth of Virginia*



# **DRAFT REGULATIONS**

## **GOVERNING PRACTITIONER SELF- REFERRAL**

### **VIRGINIA BOARD OF HEALTH PROFESSIONS**

**Title of Regulations: 18VAC75-20-10 et seq.**

**Statutory Authority: §§ 54.1-2400 and Chapter 24.1 of Title 54.1  
of the *Code of Virginia***

**Revised Date:**

(804) 662-7013 (TEL)

(804) 662-7098 (FAX)

email: [bhp@dhp.virginia.gov](mailto:bhp@dhp.virginia.gov)

## **Part II. Advisory Opinions and Exceptions.**

### **18VAC75-20-60. Application for advisory opinions.**

- A. Any practitioner or entity may request an advisory opinion on the applicability of the Act upon completion of an application and payment of a fee.
- B. Requests shall be made on an application form prescribed by the board. The request shall contain the following information:
1. The name of the practitioner or entity;
  2. Identification of the practitioner or entity and description of the health care services being provided or proposed;
  3. The type and amount of existing or proposed investment interest in the entity;
  4. A description of the nature of the investment interest and copies of any existing or proposed documents between the practitioner and the entity including but not limited to leases, contracts, organizational documents, etc.; and
  5. Certification and notarized signature of the practitioner or principal of the entity requesting the advisory opinion that the information and supporting documentation contained therein is true and correct.
- C. The application shall be reviewed for completeness, and the board may request such other additional information or documentation it deems necessary from the practitioner or entity.
- D. Upon a determination that a request for an advisory opinion is complete and that it has sufficient information, the ~~committee~~ board shall notify the practitioner or entity that it will consider its request.
- E. At the conclusion of ~~the meeting or~~ an informal conference, the committee shall issue an advisory opinion to the practitioner or entity, which shall be presented for ratification by the board.

### **18VAC75-20-70. Application for exception.**

- A. A practitioner or entity may request an exception to the prohibitions of the Act upon completion of an application and payment of a fee.
- B. Requests shall be made on an application form prescribed by the board. The application shall contain the following information:
1. The name and identifying information of the practitioner or entity;
  2. The information and documentation regarding community need and alternative financing as required by §54.1-2411 B of the Code of Virginia;
  3. Certification and notarized signature of the practitioner or principal of the entity requesting the exception that the information contained in the application and supporting documentation is true and correct.
- C. The application shall be reviewed for completeness, and the board may request additional information and documentation from the applicant.

D. Upon a determination that an application is complete and that it has sufficient information, the ~~committee~~ board shall notify the applicant that it will consider the request.

E. At the conclusion of ~~the meeting or an informal~~ conference, the committee shall issue a decision regarding the request for an exception to the applicant, which shall be presented for ratification by the board.

F. Exceptions to the Act shall be valid for a period of no more than five years.

G. Subject to verification by the board, an exception shall be renewed upon payment of a renewal fee and the receipt of certification from the practitioner or entity that the conditions under which the original exception was granted continue to warrant the exception.

## **Part IV. Delegation to an agency subordinate**

### **18VAC75-20-120. Decision to delegate.**

In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal conference to an agency subordinate to consider an application for an advisory opinion or an exception to the provisions of the Act.

### **18VAC75-20-130. Criteria for delegation.**

Applications that may be delegated shall be those approved by the chairman and executive director of the board.

### **18VAC75-20-140. Criteria for an agency subordinate.**

A. An agency subordinate authorized by the board to conduct an informal conference may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in the organizational structure of entities providing the health care services identified in the application.

B. The board shall delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a conference based on the qualifications of the subordinate and the type of case being heard.



**Virginia Board of Health Professions**

**CHAPTER 10**

**PUBLIC PARTICIPATION GUIDELINES**

**Part I**

**General Provisions**

**18VAC75-10-10. Purpose.**

The purpose of this chapter is to provide guidelines for the involvement of the public in the ~~development and promulgation~~ initial formation and development, amendment or repeal of regulations of the Board of Health Professions. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§~~9-6.14:4.1~~ 2.2-4000 et seq. of the Code of Virginia). These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

**18VAC75-10-20. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Administrative Process Act" means Chapter ~~1-1:1~~ 40 (§~~9-6.14:1~~ 2.2-4000 et seq.) of Title ~~9~~ 2.2 of the Code of Virginia.

"Board" means the Board of Health Professions.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic ~~mailing~~ lists maintained through ~~a state website~~ the Virginia Regulatory Town Hall or ~~regular mailing~~ lists maintained by the board.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by the board in accordance with the authority conferred on it by applicable laws.

**Part II**

**Notification Lists**

**18VAC75-10-30. Composition of notification lists.**

A. The board shall maintain lists of persons who have requested to be notified of the initial formation ~~and promulgation, development, amendment or repeal~~ of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.

**18VAC75-10-40. Documents to be sent to persons on the notification lists.**

A. Persons on the notification lists, as described in 18VAC75-10-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.

2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.

~~3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.~~

4 3. A notice soliciting comment on a final regulation when the regulatory process has been extended.

B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the board's website prior to the 30-day adoption period.

C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

### **Part III**

#### **Public Participation Procedures**

**18VAC75-10-50. Petition for rulemaking.**

A. As provided in §~~9-6.14:7.1~~ 2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.

2. The number and title of the regulation to be addressed.

3. A description of the regulatory problem or need to be addressed.

4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days, and shall have the sole authority to dispose of the petition.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

#### **18VAC75-10-60. Notice of Intended Regulatory Action.**

A. The board shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of a regulation. ~~The notice of intended regulatory action (NOIRA)~~ NOIRA shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons or if the Governor directs the board to hold a public hearing, such a hearing shall be scheduled.

#### **18VAC75-10-70. Notice of Comment Period.**

A. Prior to the 60-day comment period, the board shall issue a notice of comment period (NOCP) whenever it propose to initiate, amend or repeal a regulation or amend an existing regulation under a fast-track process. ~~The notice of comment period (NOCP)~~ NOCP shall indicate that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, ~~Internet~~, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment ~~may~~ shall not be accepted.

#### **18VAC75-10-80. Notice of meeting.**

A. At any meeting of the board or advisory committee at which the formation, amendment, repeal, or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the ~~Internet~~ Virginia Regulatory Town Hall and transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under ~~§9-6.14:4.1~~ 2.2-4002 or §2.2-4011 of the Code of Virginia, the notice of meeting shall indicate that a copy of the proposed regulation ~~is available on a state website or upon request to~~ may be requested from the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

#### **18VAC75-10-90. Public hearings on regulations.**

The board shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation unless, at a noticed meeting, the board determines that a hearing is not required.

**18VAC75-10-100. Periodic review of regulations.**

A. ~~Unless otherwise directed by executive order,~~ The board shall conduct ~~an informational proceeding a~~ periodic review of its regulations ~~at least every two years~~ consistent with an executive order issued by the Governor and with § 2.2-4007.1 of the Code of Virginia to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such ~~proceeding review~~ may be conducted separately or in conjunction with other ~~informational proceedings meetings~~ or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the ~~mailing list~~ notification lists identified in 18VAC75-10-30.

**Part IV**

**~~Advisory~~ Ad Hoc Committees**

**18VAC75-10-110. Appointment of committees.**

A. The board may appoint an ad hoc ~~advisory~~ committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc ~~advisory~~ committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

**18VAC75-10-120. Limitation of service.**

A. An ~~advisory~~ ad hoc committee which has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action, or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (~~§9-6.14:4.1 of the Code of Virginia~~).

B. An ~~advisory~~ ad hoc committee shall remain in existence no longer than ~~12~~ 18 months from its initial appointment unless ~~1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months. The board may authorize the ad hoc committee to continue for an additional specified period of time to complete the task for which it was appointed.~~

~~2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six month terms.~~

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**VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS  
BOARD OF HEALTH PROFESSIONS**

**Draft Workplan  
Criminal Background Checks for Regulated Health Professions**

**Background & Authority**

The Director of the Department of Health Professions has requested that the Board of Health Professions to examine the policy issues and implications related to requiring criminal background checks as a condition of licensure for health care professions in Virginia and make recommendations in time for consideration of potential legislation by the 2008 General Assembly.

Current Virginia statute does not authorize the boards to conduct automatic criminal history checks on applicants or licensees absent probable cause. However, when the respective boards are made aware through self-disclosure or other sources that a criminal history exists for an applicant or licensee, checks are authorized and are conducted on behalf of the respective boards. In 1997, the Board examined the issue of requiring criminal background checks as a condition of licensure and renewal and deemed it unnecessary and burdensome -- few states conducted such checks and the costs and delays were considered prohibitive.

Post 9/11 security has become more at issue, generally. Also, increasingly, public and private organizations have begun to automatically require criminal background checks of job candidates and volunteers and states' regulatory boards have begun to require checks of applicants for initial licensure and some also for renewal. Checks have become required by 26 Boards of Medicine (three did in 1997), and the Interstate Nursing Compact agreement has come into play which is pushing member boards to require background checks.

By virtue of the statutory authority of the Board of Health Professions to advise the Governor, the General Assembly, and the Department Director on matters related to the regulation and level of regulation of health care occupations and professions, the Board will conduct the study and provide recommendations through the Director and Secretary of Health and Human Resources accordingly (see §54.1-2510 of the Code of Virginia).

**Study Scope & Methodology.** The general scope of this review will be to provide a review of the relevant policy literature relating to the criminal background determinations and the impact of requiring criminal background checks for initial licensure and renewal for all of the health professions regulated within the Department.

The Committee will focus their efforts in determining the answers to the following key questions:

- What is the potential risk for harm in maintaining the current background check system for only those instances in which there is probable cause through self disclosure and information from other sources?
- What are the potential costs of requiring checks of all applicants and renewing licensees in terms of money, manpower, and time? Would the potential benefits outweigh this cost?

- Are there alternatives to state regulation which would adequately protect the public?

To answer the key questions, the following steps are recommended:

1. Conduct a review of the relevant policy literature.
2. Conduct a review of the current relevant state and federal laws and regulations.
3. Review available information from the states' boards which require checks to determine the costs associated with the checks and reimbursement data to develop an estimate of how regulating this group may affect costs to address Criterion Five – Economic Impact
4. Review the public information available related to criminal backgrounds of applicants and licensees in Virginia. (NOTE: Neither the Department nor any board is authorized in statute to determine whether any applicant or licensee has failed to disclose a criminal background through background checks. Hence it is not currently possible to determine the extent of undisclosed criminal backgrounds.)
5. Prepare an initial draft report to the Board for public comment.
6. Conduct statewide hearings on the issue as the potential fiscal impact which may result from such regulation.
8. Review all public comment, apply the Board's criteria and policies, and consider recommendations for changes in Virginia statute.
9. Prepare a draft with recommendations to the full Board.
10. Review the report and recommendations by the Board, and publish a draft report for consideration by the Department Director and Secretary.
11. If required based on recommendations by the Department Director and Secretary, amend the report and prepare a final report for their approval.

### **TIMETABLE**

April 20 2007	-	Regulatory Research Committee Workplan Review/Approval
June/July TBA -		Public Hearings on the Issues
July 31, 2007	-	Draft Report to the Regulatory Research Committee/ Progress Report to the Board
August/Sept. TBA	-	Receive Further Public Comment on Findings
October 24, 2007	-	Report with Summary of Public Comment to the Regulatory Research Committee for Development of Recommendations and Report to Full Board
November 1, 2007	-	Final Report to the Department Director and Secretary

**Resources Required.** The resources for this review are included in the FY 2007-08 Budgets of the Board of Health Professions. It is estimated that the review will require approximately 1/5th of the time of the Executive Director and general support from the Senior Regulatory Analyst and Board's Administrative Assistant. The total cost associated for this project, to include staff time, travel expenses telephone charges, photocopying, office materials, and court reporter, is estimated to be \$10,000.

Attachment 4

**VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS  
BOARD OF HEALTH PROFESSIONS**

**Draft Workplan  
Review of Emerging Health Professions**

**Background & Authority**

By virtue of its statutory authority in §54.1-2510 of the *Code of Virginia* to advise the Governor, the General Assembly, and the Department Director on matters related to the regulation and level of regulation of health care occupations and professions, the Board is beginning an ongoing review of emerging health professions. The study will highlight individual professions selected by the Board for review.

To govern evaluative reviews, the Board has developed formal criteria and policies referenced in its publication, *Policies and Procedures for the Evaluation of the Need to Regulate Health Occupations and Professions, 1998*. Among other things, the criteria assess the degree of risk from unregulated practice, the costs and benefits of the various levels of regulation, and the advantages and disadvantages of the various alternatives to regulation that might protect the public. By adopting these criteria and application policies, the Board has endorsed a consistent standard by which to judge the need to regulate any health profession. The aim of this standard is to lead decision-makers to consider the least governmental restriction possible that is consistent with the public's protection. This standard is in keeping with regulatory principles established in Virginia law and is accepted in the national community of regulators.

**Study Scope & Methodology.** The general scope of this study will be to provide a review of the policy literature on selected emerging health-related occupations and professions in Virginia to better understand the scopes of practice of these practitioners and issues relating to the need for adequate safeguards for the public.

The Committee will make recommendations to the full Board concerning the practitioner group(s) to be selected. With the approval of the full Board, the Committee will examine the competencies currently expected of the selected practitioner groups in other jurisdictions to the degree that they exist. The Committee will focus their efforts in determining the answers to the following key questions for each group:

- What is the potential risk for harm to the consumer?
- What specialized skills and training do practitioners possess?
- To what degree is independent judgment required in their practices?
- Is their scope of practice distinguishable from other regulated occupations or professions?
- What would be the economic impact to the public if this group were regulated?



- Are there alternatives other than state regulation of this occupation which would adequately protect the public?
- If the Committee determines that this occupation requires state regulation, what is the least restrictive level that is consistent with the protection of the public's health, safety and welfare?

To answer the key questions, the following steps are recommended:

1. Conduct a review of the general policy literature, if any, related to the regulation of the respective group.
2. Conduct a review of the current relevant states laws and regulations.
3. Review malpractice insurance coverage data (if it is found to exist) in conjunction with other data to address Criterion One - Risk of Harm to the Public.
4. Review available reimbursement data to develop an estimate of how regulating this group may affect costs to address Criterion Five – Economic Impact
5. Prepare an initial draft report to the Board for public comment.
6. Conduct a hearing on the issue of the state regulation of this occupation, including any public health and safety issues germane to current practices as well as the potential fiscal impact which may result from such regulation.
7. Review all public comment, apply the Board's criteria and policies, and consider recommendations for changes in Virginia statute.
8. Prepare a draft with recommendations to the full Board.
9. Review the report and recommendations by the Board, and publish a draft report for consideration by the Department Director and Secretary.
10. If required based on recommendations by the Department Director and Secretary, amend the report and prepare a final report for their approval.

### **TIMETABLE**

April 20 2007	- Regulatory Research Committee Workplan Review/Approval and recommendation to the full Board on the emerging profession(s) selected for this year's review.
July 31, 2007	-Draft Report to the Regulatory Research Committee/ Progress Report to the Board
August/Sept. TBA	-Public Hearing on Findings
October 24, 2007	- Report with Summary of Public Comment to the Regulatory Research Committee for Development of Recommendations and Report to Full Board
November 1, 2007	- Final Report to the Department Director and Secretary

**Resources Required.** The resources for this review are included in the FY 2007-08 Budgets of the Board of Health Professions. It is estimated that the review will require approximately 1/5th of the time of the Executive Director and general support from the Senior Regulatory Analyst and Board's Administrative Assistant. The total cost associated for this project, to include staff time, telephone charges, photocopying, office materials, and court reporter, is estimated to be \$4,000.